

## **REMARKS/ARGUMENTS**

In paragraph 1 the Examiner states that claims 22-28, 33-37 and 39-43 are rejected under 35 U.S.C. § 102(e) as being anticipated by Aylward et al. for the same reasons as set forth in paragraph 3 of the last office action filed February 28, 2003. The last Office Action stated that the instant claims would be allowable if antistatic layers were excluded from being present intermediate the transparent polymer sheet and the protective shield layer. However, the Examiner stated that this statement was in error and was intended to be applied to the prior art rejections other than the § 102(e) rejection over Aylward et al. Aylward et al. discloses shield layers on their transparent polymer sheets for scratch and finger print protection without the presence of antistatic layers. The Examiner notes that Aylward et al. also discloses the use of environmental protection layers on the silver halide emulsion layers formed on both sides of the transparent polymer sheets without the presence of antistatic layers. The Examiner states that prior art rejections not relying on Aylward et al. were based on the obviousness of using the combination antistatic layers and protective layers for antistatic layers as backing layers on silver halide photographic elements. The Examiner states that this rejection will not be made final since the statement of allowability in the last office action should not have been applied to the rejection of paragraph 1 above. The applicant respectfully traverses this rejection.

In paragraph 2 the Examiner states that claim 44 is objected to as depending on a rejected claim but would be allowable if written in proper independent form. The Examiner states that Aylward et al. does not disclose the use of upper protective shield layers comprising polymeric beads. The Examiner states that the above rejection under 35 U.S.C. § 102(e) might be overcome by a showing under 37 CFR 1.132 that the invention disclosed but not claimed in Aylward et al. was derived from the inventor of this application which has three of the four inventors in Aylward et al. or by an appropriate showing under 37 CFR 1.131.

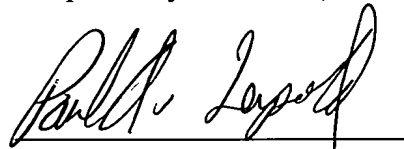
While the applicant gratefully notes the indication that claim 44 would be allowable if written in independent form, it is considered that the

invention disclosed here is worthy of broader coverage for the reasons stated below.

The Examiner states that the above rejection under 35 USC § 102(e) may be overcome by a showing under 37 CFR 1.132 that the invention disclosed but had claimed in Aylward et al. was derived from the inventor of this application. It is respectfully urged that such statement is not necessary. The Alward et al. reference was filed only about two months before the instant application. Since this rejection is only made under 35 USC § 102(e), the Examiner's attention is directed to 35 U.S.C. § 103(c). It is stated in 35 U.S.C. § 103(c) that subject matter which qualifies as prior art only under 35 U.S.C. § 102(e) shall not preclude patentability where the subject matter and claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. A statement in compliance with 35 U.S.C. § 103(c) was already made in this file in the Amendment filed February 19, 2003 at page 8 lines 18-20. Therefore, it is respectfully requested that this rejection under 35 U.S.C. § 102(e) be reconsidered and withdrawn. If the Examiner believes that sections 35 U.S.C. § 102 (e) and 35 U.S.C. § 103(c) do not make it clear that an affidavit is not required, the Examiner is respectfully requested to provide basis why they do not apply in this application.

Therefore, it is respectfully requested that the rejections under 35 U.S.C. § 102(e) be reconsidered and withdrawn and that an early Notice of Allowance be issued in this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul A. Leipold", written over a horizontal line.

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